

**U.S. Department of
Homeland Security**

**United States
Coast Guard**



Office of the Administrative Law Judge
United States Coast Guard

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5720
12 September 2019

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RE: DHS FOIA Appeal Number 2019-HQAP-00316; FOIA Request Number: 2019-HQFO-00121

Dear Mr/s. Sai:

This letter concerns your appeal of the Department of Homeland Security's (DHS) adverse response to your FOIA request 2019-HQFO-00121. In your initial request on October 22, 2018, you sought materials relating to:

Email metadata for every email sent to or from any internet domain name owned or operated by or for United States Computer Emergency Readiness Team or intranet domain name owned or operated by or of United States Computer Emergency Readiness Team; including all subdomains thereof; stored on any government-accessible server, in electronic format at the time this request was made or at the time the search on this request as made;

Please provide the full email header section but no part of the body section;

When making your request, you recognized it encompassed millions or billions of records and might include gigabytes or terabytes of data.

After receiving an adverse response from the Agency, you exercised your right to appeal. As set for the below, I am affirming the Agency's determination that your request is overbroad and/or unduly burdensome.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Department of Homeland Security.

Upon review of the file, I agree your request to was too broad in scope for DHS to perform an adequate search. Therefore, I am **AFFIRMING** DHS' determination.

Pursuant to the Freedom of Information Act, a FOIA request must reasonably describe the records sought. 5 u.S.C. § 552(a)(3)(A). As both your and DHS acknowledge, a request is sufficient if it enable a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." Truitt v. Dep't of State, 897 F.2d 540 (D.C. Cir. 1980). Federal courts explain that "[t]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requestors, or to allow requestors to conduct "fishing expeditions" through agency files." For example, if a FOIA request is unreasonable if it requires the agency employees to have "clairvoyant capabilities" to discern the requestors needs or requires countless number of hours seeking needles in a bureaucratic haystack.

Here, your request admittedly seeks millions, possibly billions of responses. I find your request similar to Hainey v. U.S. Dept of Interior, 925 F.Supp.2d 34 (D.D.C. 2013). There, the court acknowledged it is well established that "an agency need not honor a [FOIA] request that requires 'an unreasonably burdensome search.'" Am. Fed'n of Gov't Employees, Local 2782 v. Dep't of Commerce, 907 F.2d 203, 209 (D.C.Cir.1990) (quoting Goland, 607 F.2d at 353); see also Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 891–92 (D.C.Cir.1995); Int'l Counsel Bureau v. Dep't of Defense, 723 F.Supp.2d 54, 59–60 (D.D.C.2010); Pub. Citizen, Inc. v. Dep't of Educ., 292 F.Supp.2d 1, 6 (D.D.C.2003). This is because "FOIA was not intended to reduce government agencies to full-time investigators on behalf of requestors." Assassination Archives & Research Ctr., Inc. v. CIA, 720 F.Supp. 217, 219 (D.D.C.1989). The court noted, "it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome." Id. (citing Yeager v. DEA, 678 F.2d 315 (1982)); Judicial Watch, Inc. v. Export–Import Bank, 108 F.Supp.2d 19, 27–28 (D.D.C.2000).

In Hainey, the court refused to require the Agency to search every email sent or received by 25 employees throughout a two year period. Hainey v. U.S. Dep't of the Interior, 925 F. Supp. 2d 34, 45 (D.D.C. 2013). The request in Hainey pales in comparison to yours, which asks for date concerning "every email sent to or from any internet domain name owned or operated by or for United States computer Emergency Readiness Team." Consistent with Hainey, I find this request overbroad and unduly burdensome.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

This decision is the final action of the Department of Homeland Security concerning DHS FOIA Appeal Number 2019-HQAP-00316; FOIA Request Number: 2019-HQFO-00121. While a comprehensive review of your appeal was made, you may seek judicial review of this decision pursuant to 5 U.S.C. §552(a)(4)(B) in United States District Court for either: 1) the district where you reside; 2) the district where the agency records are situated; or 3) the District of Columbia.

Sincerely,

Tommy B. Cantrell
Attorney-Advisor
United States Coast Guard
United States Department of Homeland Security

Copy : FOIA Officer
Sent: Via first class mail to the above address.